109-189

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~955.~~ ~~639~~ ~~344~~ 94

CHARLES A. SNYDER, APPELLANT,

vs.

MORRIS MARKS, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

**FILED OCTOBER 11, 1880.**

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CHARLES A. SNYDER
*versus*
MORRIS MARKS, COLLECTOR, &C. } No. 8960.

*Petition for writ of certiorari.—Filed December 22d*, 1879.

To the hon. the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of Morris Marks, with respect, shows that he is an officer of the United States, to wit, collector of internal revenue for the internal revenue district of Louisiana, appointed under and acting by authority of the internal revenue laws of the United States; that on the day of December, A. D. 1879, a certain civil suit was commenced against him in his said official capacity by one Charles A. Snyder in a court of the State of Louisiana, to wit, in the third district court
2 for the parish of Orleans, No. 26016 on the docket of said court, and the citation and petition therein issued has been served on him (your petitioner).

That the said suit is for and on account of acts done by your petitioner as collector aforesaid under authority of the internal revenue laws of the United States, and that the plaintiff in said suit, the said Charles A. Snyder, seeks therein to enjoin your petitioner, in his official capacity, from enforcing the payment of certain assessments made against the said Snyder under authority of the internal revenue laws of the United States by executing warrants of destraint as authorized by such laws.

That the said suit was commenced by citation and petition, but has not as yet been tried in said State court.

That petitioner desires to have the same removed therefrom for trial into this hon. court, now in session, for its November term, A. D. 1879, in this district.

Wherefore, the annexed affidavit and certificate considered, he
3 prays that a writ of certiorari may issue to the said third district court of the parish of Orleans requiring it to send forthwith to this hon. court the records and proceedings in the said cause.

(Signed) A. H. LEONARD,
*Att'y for Petitioner.*

*Affidavit of collector.*

Morris Marks, being sworn, says all the statements in and allegations of above and foregoing *foregoing* petition are true.

(Signed) MORRIS MARKS.

Subscribed and sworn before me Dec. 22d, 1879.

(Signed) F. A. WOOLFLEY,
*Comm'r U. S. Circuit Court, District of Louisiana.*

*Certificate of counsel.*

I certify that, as counsel for petitioner, I have examined the proceed-

ings against him in the suit mentioned, and carefully enquired into all the matters in this petition set forth, and I believe them to be true.

(Signed) A. H. LEONARD.

4 *Order to issue writ.*

Let a writ of certiorari issue herein as prayed for and according to law.

December 22d, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

*Writ of certiorari.—Issued December 22d, 1879.*

UNITED STATES OF AMERICA,
*District of Louisiana, ss:*

Circuit court of the United States for the fifth circuit and district of Louisiana.

The President of the United States of America to the honorable the judge of the third district court for the parish of Orleans, greeting:

Because it has been represented to us in our said court that a cause has been lately instituted and now is pending in your said court, wherein Charles A. Snyder is plaintiff and Morris Marks, an officer of the United States, to wit, collector of internal revenue, is defendant, said
5 cause being represented to us as being No. 26016 of the docket of your said court, and that the said Morris Marks, collector as aforesaid, has been served with process, and because the said Morris Marks, collector, &c., has this day filed in our said court his petition, duly verified and certified as required by law, wherein he has complained that the said suit was and is instituted against him, so being such officer as aforesaid, for and on account of an act done by him as such officer as aforesaid, under color of his said office, administering the revenue laws of the United States, and has in due form of law prayed of us that said suit be entered on the docket of our said court, and that the said cause be hereafter proceeded in all respects as if the said cause had been originally commenced in our said court; and we being willing that the same shall be done, and having ordered the said cause to be entered on the docket of our said court, where the said cause is now so docketed:

We therefore command you, that you do forthwith certify to us
6 in our said court a full record of all the proceedings had, and of record in your said court, in, about, or concerning the said cause now remaining in your said court, that said cause may be proceeded in in our said court as by the statutes of the said United States provided and required.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 22d day of Dec'r, A. D. 1879.

[SEAL.] (Signed) T. V. COUPLAND,
*D'y Clerk.*

*Marshal's return.*

Received, Dec'r 22d, 1879, by the U. S. marshal, and on December 24, 1879, I served a copy of the within writ of certiorari on the judge of the third district court for the parish of Orleans, by handing the same to

Hon. F. A. Munroe, the judge of said district court, in person, in the city of New Orleans.

(Signed) E. S. CURRY,
*D'y U. S. Marshal.*

7 *Motion to vacate writ of certiorari.—Entered and filed Dec'r 27th*, 1879.

U. S. circuit court, dist. of La.

CHARLES A. SNYDER
*vs.*
MORRIS MARKS. } No. 8960.

And now comes Charles A. Snyder, plaintiff in the above-named case (who appears in this court only for the purpose of this motion), and moves the court to vacate and recall the writ of certiorari herein issued to the 3d district court of the parish of Orleans, because, he says—

1st. That said writ was issued without authority of law.

2d. That if any law authorized such writs in like cases, defendant's petition does not set forth and show sufficient cause for said writ.

Wherefore it is ordered that said defendant show cause on Saturday the 10th day of January, 1880, at 11 a. m., why said motion should not be allowed, and said writ vacated and recalled.

(Signed) ROUSE & GRANT,
*Att'ys for mover.*

*Marshal's return.*

8 Received, Dec. 29, 1879, by the U. S. marshal, and on same day, month, and year, I served a copy of the within rule on A. H. Leonard, esq., U. S. district att'y, by delivering the same to him in person, in the city of New Orleans.

(Signed) E. S. CURRY,
*D'y U. S. Marshal.*

*Transcript.—Filed January 14th*, 1880.

UNITED STATES OF AMERICA,
*State of Louisiana:*

Third district court, parish of Orleans.

CHARLES A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR OF INTERNAL REVENUE. } No. 26016.

*Petition for injunction.—Filed December 11th*, 1879.

To the honorable F. A. Monroe, judge of the third district court for the parish of Orleans, State of Louisiana:

9 The petition of Charles A. Snyder, who resides in Orleans Parish, respectfully represents: That he has been engaged in the business of manufacturing tobacco in the city of New Orleans for several years last past, and that he has always conformed to the regulations of the internal revenue department of the United States, paid all

taxes due by him to the United States, and in all respects complied with the laws of the United States governing said business.

But your petitioner represents that the defendant, Morris Marks, who is collector of internal revenue of the United States for the district of Louisiana, and who resides in Orleans Parish, claims that he is indebted to the United States on two pretended assessments, that is to say:

1st. And pretended assessments against your petitioner for some cause unknown and not notified to him, in the sum of one thousand eight hundred and seventy-two & $\frac{12}{100}$ dollars.

2d. On a pretended assessment, for some cause unknown and not notified to him against a certain firm styled Irwin & Snyder in the sum of fifteen hundred and ninety-seven $\frac{68}{100}$ dollars.

10 Now your petitioner alleges that both of said pretended assessments are void for uncertainty, illegal and unauthorized; that as to the assessments, secondly described, your petitioner was never a member of any such firm as Irwin and Snyder, and that the Commissioner of Internal Revenue could not lawfully make such assessments even if such a firm existed, because said defendant claims that the alleged tax occurred more than fifteen months before such assessment was made.

And your petitioner denies that he owes or ever did owe the demand of either of said assessments in the manner and form made, and he denies that either of said assessments were or are valid in law, or in any manner authorized by law; but, on the contrary, avers that they were and are void in law and of no effect against him, and are not sufficient to authorize the said collector of internal revenue to demand payment thereof or to collect the same by distraint.

11 But your petitioner avers that, notwithstanding his want of authority and your petitioner's legal rights in the premises, the defendant, Morris Marks, collector of internal revenue, as aforesaid, has demanded payment of said amounts so illegally claimed, and threatens to seize and distrain his property and use the same in satisfaction of the amounts aforesaid; that such seizure will be made under a warrant of distraint to be issued by said collector without resort to legal process, and without giving your petitioner an opportunity to make his defense good against said unlawful assessments, to his irreparable injury.

Your petitioner further shows that he was required to give a bond in favor of the United States, conditioned for the payment of all lawful assessments to be made against him in the course of his said business, as a manufacturer of tobacco, with good surety, and that if the United States has any lawful claim against him an action will lie on such

12 bond, which is ample security in the premises.

But your petitioner shows that on his part he has no adequate remedy against the United States, for the illegal seizure and appropriation of his property to pay a claim he does not owe.

Wherefore petitioner prays that a writ of injunction may issue against the defendant, Morris Marks, collector of internal revenue, as aforesaid, enjoining him from seizing and distraining the property of your petitioner and from selling the same to pay said illegal assessments, to wit, one for $1,597.68 against Irwin & Snyder, and one for $1,872.12 against Charles A. Snyder, that said defendant may be *be* cited to answer this demand, and that, after due proceedings had, that said assessments be declared void, and that said injunction be made perpetual.

And petitioner prays for costs and all general relief in the premises.

(Signed) CHARLES A. SNYDER,
*Petitioner.*

(Signed) ROUSE & GRANT.

13 *Attorneys.*

*Affidavit of Chas. A. Snyder annexed to and made part of petition.—Filed December 11, 1879.*

STATE OF LOUISIANA,
*Parish of Orleans, ss:*

Charles A. Snyder, the above-named petitioner, being first duly sworn, declares that the facts stated in the foregoing petition are true.

(Signed) CHARLES A. SNYDER.

Sworn to and subscribed before me, at New Orleans, this eleventh day of December, 1879.

[SEAL.] (Signed) CHAS. G. ANDRY,
*Notary Public.*

*Order for injunction.*

Let the injunction prayed for be granted on plaintiff giving bond with good and solvent surety, conditioned as the law directs, in the sum of fifteen hundred ($1,500) dollars.

December 11th, 1879.

(Signed) F. A. MONROE,
*Judge.*

14 *Bond for injunction.—Filed December 11, 1879.*

Know all men by these presents, that we, Charles A. Snyder as principal, and C. B. Block as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto Morris Marks, collector of internal revenue for the district of Louisiana, his executors, administrators, heirs, and assigns, in the sum of fifteen hundred dollars, lawful money of the United States of America, to be paid to the said Morris Marks, collector, &c., his executors, administrators, heirs, and assigns, for which payment well and truly to be made to the said Morris Marks, collector, &c., his executors, administrators, heirs, and assigns, we bind ourselves in solido, and each of us by himself and each of our executors, administrators, heirs, and assigns firmly by these presents. Sealed with our seals and dated the 11th day of December, 1879.

Whereas the said Charles A. Snyder has this day presented
15 a petition to the honorable the third district court for the parish of Orleans, praying for a writ of injunction to issue against the said Morris Marks, collector, &c:

Now the condition of the above obligation is that we, the above bound Charles A. Snyder as principal, and C. B. Block as surety, will well and truly pay to the said Morris Marks, collector, &c., the defendant in said injunction, all such damages as he may recover against us, in case it should be decided that the said injunction was wrongfully obtained.

(Signed) CHARLES A. SNYDER. [L. S.]
(do) C. B. BLOCK. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) WM. GRANT.

*Writ of injunction to defendant, Morris Marks, collector, &c.—Issued 11th December, 1879.*

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

THE STATE OF LOUISIANA:

CHARLES A. SNYDER
*versus*
16 MORRIS MARKS, COLLECTOR OF INTERNAL REVENUE. } No. 26016.

3d dist. court for the parish of Orleans.

To Morris Marks, collector of internal revenue for the district of Louisiana, greeting:

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the third district court for the parish of Orleans, from seizing and distraining the property of Charles A. Snyder, plaintiff herein, and from selling the same to pay the assessments of $1,597.68 against Irwin & Snyder, and for $1,872.12 against Charles A. Snyder.

And you are so enjoined, restrained, and prohibited until the further orders of this court.

Witness the honorable F. A. Monroe, judge of our said court, this 11th day of December, in the year of our Lord, one thousand eight hundred and seventy-nine, and in the one hundred and fourth year of
17 the indepen'ce of the United States.

[SEAL.] (Signed) P. J. SULLIVAN,
*Deputy Clerk.*

*Sheriff's return on writ.—Filed Dec. 11th, 1879.*

Received December 11th, 1879, and on the 11th December, 1879, I served a copy of the within writ of injunction on Morris Marks, collector of internal revenue, district of Louisiana, herein named, in person.

Returned same day.

(Signed) WM. BELL,
*Deputy Sheriff.*

*Citation to def't Morris Marks, collector, &c.—Issued 12th December, 1879.*

STATE OF LOUISIANA:

Third district court for the parish of Orleans.

CHARLES A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR, &C. } No. 26016.

3d dist. court for the parish of Orleans.

Mr. MORRIS MARKS,
*Collector of Internal Revenue of the United States for the District of Louisiana, New Orleans:*

18 You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation,

or deliver your answer to the same, in the office of the clerk of the third district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable F. A. Monroe, judge of said court, the 12th day of December, in the year of our Lord 1879.

(Signed) JOE. GARIDEL,
*Deputy Clerk.*

*Sheriff's return on citation.—Filed December 13th*, 1879.

Received December 12th, 1879, and on the 13th day of December, 1879, served a copy of within citation and accompanying petition on Morris Marks, collector of internal revenue of the United States for the district of Louisiana, herein named, in person.

Returned same day.

(Signed) WM. BELL,
*Deputy Sheriff.*

19 *Certificate.*

UNITED STATES OF AMERICA,
*State of Louisiana:*

Third district court, parish of Orleans.

I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that the foregoing twelve (12) pages do contain a complete, true, and correct transcript of all the proceedings had and documents filed in the suit entitled Charles A. Snyder vs. Morris Marks, collector of internal revenue, No. 26016, of the docket of said third district court, the whole of which is now copied, in obedience to the writ of certiorari issued from the hon. the circuit court of the United States for the district of Louisiana.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 2d day of January, A. D. 1880, and in the 104th year of the Independence of the United States.

[SEAL.] (Signed) B. ARMBRUSTER, *Clerk.*

20 I, Frank A. Monroe, sole judge of the third district court for the parish of Orleans, do hereby certify that Benjamin Armbruster is the clerk of said court; that the same is a court of record having general civil jurisdiction, and that the signature Benjamin Armbruster, clerk, to the foregoing certificate, is in the proper handwriting of him, the said Benjamin Armbruster, clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the second day of January, in the year A. D. 1880.

[SEAL.] (Signed) F. A. MONROE, *Judge.*

21 I, Benjamin Armbruster, clerk of the third district court for the parish of Orleans, do hereby certify that Frank A. Monroe, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same sole judge of the third district court for the parish of Orleans, duly elected, and commissioned, and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this second day of January, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] (Signed) B. ARMBRUSTER,
*Clerk.*

*Submission of motion to vacate.—Extract from the minutes, November term, 1879.*

NEW ORLEANS, *Saturday, January 17th*, 1880.

Court met pursuant to adjournment, present Hon. E. C Billings, district judge.

CHAS. A. SNYDER
*vs.*
MORRIS MARKS. } No. 8960.

This cause came on to be heard on the motion to vacate the
22 writ of certiorari herein, and having been argued by the counsel for the parties respectively, the court took time to consider.

*Demurrer.—Filed January 20th*, 1880.

Circuit court, 5th circuit, district of Louisiana.

CHAS. A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR, &C. } No.

Morris Marks, collector of internal revenue of U. S. for district of Louisiana, defendant herein, demurs to plaintiff's bill of complaint, and for cause of demurrer shows that said bill does not contain any matter of equity wherein to sustain such writ of injunction as is sought and prayed for in and by said bill, and that complainant has not made such a case as entitles him in a court of equity to any relief from or against this defendant touching the matters, or any one thereof, contained in said bill.

Defendant shows further that no suit can be maintained in any court to restrain the collection of any tax of the United States; and further that in this action complainant cannot be permitted to attack or
23 question the validity or irregularity of the assessment against him, or to restrain the execution of warrant thereunder issued.

Wherefore defendant prays to be hence dismissed with costs, and that injunction granted be dissolved.

(Signed) A. H. LEONARD,
*U. S. Attorney, Counsel for Defendant.*

I certify that, in my opinion, the foregoing demurrer is well founded in law, and proper to be filed in above cause.

Jan'y 19th, 1880.

(Signed) A. H. LEONARD,
*Counsel for Def't.*

UNITED STATES OF AMERICA,
*District of Louisiana:*

5th circuit, in circuit court.

Morris Marks, being duly sworn, deposes and says he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceeding therein.

(Signed) M. MARKS.

Subscribed and sworn before me Jan'y 19, 1880.

(Signed) F. A. WOOLFLEY,
*Commissioner U. S. Circuit Court, District of Louisiana.*

24 *Entry in chancery order-book.—January rules*, 1880. *January 20th*, 1880.

CHARLES A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR, &C. } No. 8960.

Morris Marks, collector, &c., defendant herein, by A. H. Leonard, his solicitor, has this day filed his exceptions to the report of J. Ward Gurley, jr., special master, filed Dec'r 22d, 1879.

*Motion to vacate refused.—Extract from minutes of January 30th*, 1880.

CHAS. A. SNYDER
*vs.*
MORRIS MARKS. } No. 8960.

This cause came on to be heard upon the plaintiff's motion to vacate and recall the writ of certiorari herein issued to the 3d district court for the parish of Orleans, and was argued by counsel.

On consideration thereof, it is ordered that the said motion be refused.

25 *Entry in chancery order-book.—February rules*, 1880. *February 2d*, 1880.

CHARLES A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR, &C. } No. 8960.

And now comes the complainant, by Rouse & Grant, his solicitors, and sets down for argument the demurrer of Morris Marks, filed herein.

*Hearing. Order to reform pleadings & continuance.—Extract from minutes of February* 14, 1880.

This cause came on to be heard on the demurrer herein filed by the defendant, and, after hearing counsel, it was ordered that the plaintiff have leave to reform his pleadings according to regular practice in equity, and that the demurrer be continued till the 21st instant, at 11 a. m.

This reference approved.

*Amended bill.—Filed February 21st, 1880.*

To the honorable the judges of the United States circuit court for the district of Louisiana:

Charles A. Snyder, of New Orleans and a citizen of the State of Louisiana, brings this his bill against Morris Marks, of New Orleans and a citizen of the State of Louisiana.

And thereupon your orator complains and says that heretofore, to wit, on the day of , 1879, he filed his petition in the 3d
26 district court for the parish of Orleans, complaining of the said Morris Marks, defendant, and obtained a writ of injunction against him as prayed for therein, and afterwards the record of his said suit was removed into this court by a writ of certiorari upon the petition of said defendant, alleging that he was collector of internal revenue for the district of Louisiana, and that the suit was such as the statute of the United States authorized him to remove into this hon. court, all of which will more fully appear from the record of the proceedings herein, and in said State court now on file, and returned into this court in obedience to said writ of certiorari, and afterwards your orator moved to quash said writ and recall the same as authorized by law, and improvidently issued, which motion was denied, and now, without waiving his right to have said proceedings in this court vacated and held as naught, he, with leave of the court, and an order to conform his pleadings to the forms of equity practice, amends his complaint, and complains as follows, to wit:

27 Your orator represents that since the 5th day of July, 1878, until the day of February, 1880, he was engaged in the business of tobacco manufacturer at the city of New Orleans, and that in all respects he conformed to the provisions of law and all lawful regulations governing his said business.

And he further represents that the defendant, Morris Marks, who is the collector of internal revenue for the district of Louisiana, claims that he is indebted to the United States by reason of certain pretended assessments said to have been made by the Commissioner of Internal Revenue; that is to say, 1st, on a pretended assessment against your orator upon the October list of 1879 for the sum of eighteen hundred and seventy-two & $\frac{12}{100}$ dollars; and, 2d, on a pretended assessment against Irwin & Snyder upon said list for the sum of fifteen hundred and ninety-seven & $\frac{68}{100}$ dollars, a copy of which pretended assessment is hereto annexed and made part of this bill, and marked Exhibit A.

28 And your orator shows that said assessments do not show upon what they or either of them are based, nor disclose upon what thing said taxes are claimants be due, and he is advised and therefore avers the same be void for uncertainty; that they are and were unauthorized by law, and that the Commissioner of Internal Revenue was without jurisdiction in the premises to make the same.

And your orator further shows that said assessments were made on the 17th day of November, 1879, more than fifteen months after the time which said assessment against said Irwin & Snyder appears to embrace had elapsed, and a portion of the time embraced in the assessment against your orator had also elapsed before said assessment was made, and said commissioner was without authority in law to make such assessments, except for a period of time not exceeding fifteen months prior to making the same.

And your orator further shows that he was never a member of
29 any such firm as Irwin & Snyder.

And so your orator denies that he owes, or ever did owe the amount of either of said assessments, in manner and form made as aforesaid, and denies that they are valid in law, or by any law authorized, but on the contrary avers that they are and were void in law, and of no effect against him, and are not sufficient to authorize the said collector of internal revenue to demand payment thereof, or to collect the same by distraint or otherwise.

But your orator avers that notwithstanding his want of lawful authority, the defendant, Morris Marks, collector as aforesaid, has demanded payment of your orator of the amount of both of said illegal and void assessments, and has threatened to seize and distrain the property of your orator, and sell the same in satisfaction of said demands; and would have done so except for the injunction hereinbefore obtained against him, and unless the same be perpetuated your orator fears that he will so seize and distrain your orator's property,
30 without legal process, and thus deprive your orator of the right to make his defence good against said unlawful assessments, and that such seizure and sale would cast a cloud upon the title to his real estate if the same were made the subject of such distraint and sale.

And orator avers that said Marks is, as your orator is informed and believes, without property liable to execution, equal to, or otherwise able to respond to the damages which his seizure and sale of your orator's property to the extent required to pay said void assessments would cause your orator to suffer, and such seizure and sale would therefore work your orator irreparable injury.

And your petitioner further shows that when he commenced the manufacture of tobacco he gave a bond in favor of the United States in the penal sum of twenty thousand dollars, conditioned, among other things, that he would stamp all tobacco manufactured by him, as required by law, and comply with all the requirements of law relating to the
31 manufacture of tobacco, and he avers that the sureties upon said bond are solvent; and if the United States has any lawful claim against him, an action will lie upon said bond, which is ample security in the premises, while your orator is without adequate remedy against the United States for the illegal seizure and appropriation of his property to the payment of said claims, which he does not owe.

Inasmuch as your orator is without any adequate remedy in the premises except such as this hon. court sitting in equity can give, to the end, therefore, that said defendant may, if he can, show why your orator should not have the relief herein prayed, and may full, true, and complete answer make, according to the best of his knowledge, information, and belief, to all and singular the matters aforesaid; and that it be ordered, adjudged, and decreed that each of said pretended assessments were
32 and are null and void and of no effect against your orator, and that the defendant, Morris Marks, collector of internal revenue as aforesaid, be restrained and enjoined and absolutely prohibited from distraining upon or selling your orator's property, for the purpose of collecting the amount of said assessments, and from otherwise collecting, or attempting to collect the same, except by judicial process, and that all his deputies or agents and his successors in office be so enjoined and restrained, and that on final hearing said injunction be made perpetual.

And may it please your honors to grant such other and further relief in the premises as the nature of the circumstances case may require,

and as to your honors may seem meet. And your orator will ever pray, etc.

(Signed) J. D. ROUSE.
*Solicitor.*

(Signed) WM. GRANT,
*Of Counsel.*

STATE AND DISTRICT OF LOUISIANA:

33 Charles A. Snyder, being duly sworn, says that the statements made in the foregoing bill are true, except such as are made upon information and belief, he believes to true.

Personally appeared Charles A. Snyder, who, being duly sworn, made oath to the truth of the statements in the foregoing bill as stated in this unsigned affidavit. The reason said affidavit was not signed was owing to my failure to examine the same before affixing my signature.

(Signed) F. A. WOOLFLEY,
*Comm'r U. S. Circuit Court.*

34 *Exhibit A annexed to and made a part of foregoing bill of complaint, and filed with same Febr'y 21st, 1880.*

Alphabetical list of persons liable to tax under the internal revenue laws of the United States in the collection district of the State of Louisiana, reported by the collector of said district for assessments and the amount assessed against each by the Commissioner of Internal Revenue, and certified to the collector of said district for the month of October, 1879.

| Name. | P. O. address. | Article or occupation. | Period. | Tax assessed. | Total tax and penalty assessed. |
|---|---|---|---|---|---|
| Snyder, Chas. A.. | New Orleans.... | S. T. Tob, 7,800½ lbs. | July 6, '78, to Dec. 3, '78. | $1 872.12 | $1, 872.12 |
| Irwin & Snyder.. | .....do..... | ....do..... 6,657 lbs. | Jan'y 1, '78, to June 5, '78. | 1, 597.68 | 1, 597.68 |

Made Nov. 17, 1879.

*Submission of demurrer.—Extract from minutes of February 21st, 1880.*

CHAS. A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR, &C. } No. 8960.

35 This cause came on to be heard on the demurrer, and having been argued by Rouse & Grant for complainant and A. H. Leonard, U. S. attorney, for defendant, the court took time to consider.

*Decree sustaining demurrer and dismissing bill.—Entered & filed April 14th, 1880.*

CHARLES A. SNYDER
*vs.*
MORRIS MARKS, COLLECTOR, &C. } No. 8960.

This cause came on to be heard on the bill and demurrer to the bill filed by Morris Marks, collector of internal revenue of the United States for the district of Louisiana, defendant, and was argued by counsel of the parties, respectively.

On consideration whereof it is ordered, adjudged, and decreed that said demurrer be maintained and that complainant's bill of complaint be and is hereby dismissed at his costs to be taxed.

(Signed) EDWARD C. BILLINGS,
*Judge.*

36 *Motion and order for appeal.— Entered and filed April 16th*, 1880.

CHARLES A. SNYDER *vs.* MORRIS MARKS. } No. 8960.

On motion of Rouse & Grant, solicitors for complainant, suggesting that said complainant believes there is error to his prejudice in the final decree herein rendered against him on the 14th day of April, 1880, and that he desires to appeal therefrom with a supersedeas, it is ordered that such appeal be granted returnable to the Supreme Court of the United States the first day of its next term, and that the same shall operate as a supersedeas upon complainant giving bond in the sum of four thousand dollars, with solvent surety, and conditioned as the law directs.

*Bond for appeal.—Filed April 24*, 1880.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Charles A. Snyder, as
37 principal, and Charles B. Block, as surety, are held and firmly bound jointly and severally unto Morris Marks, collector of internal revenue for the district of Louisiana in the sum of four thousand dollars, lawful money of the United States of America, to be paid to the said Morris Marks, or his successors in office, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, a'd administrators firmly by these presents. Sealed with our seals and dated the 24th day of April, in the year of our Lord eighteen hundred and eighty.

Whereas the said Charles A. Snyder having heretofore, to wit, on the 16th day of April, 1880, taken an appeal to the Supreme Court of the United States from, and to reverse, the decree rendered on the 14th day of April, 1880, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Charles A. Snyder vs. Morris Marks, collector, etc., No. 8960 of the docket thereof:

38 Now the condition of the above obligation is that if the above bounden Charles A. Snyder shall prosecute his said appeal to effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) CHAS. A. SNYDER. [L. S.]
do. CHAS. B. BLOCK. [L. S.]

Approved.
(Signed) EDWARD C. BILLINGS,
*Judge.*

39 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States

for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 37 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Charles A. Snyder vs. Morris Marks, collector, &c., No. 8960 of the docket, so far as the same now remains of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 1st day of September, A. D. 1880.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 1st day of September, A. D. 1880.

EDWARD C. BILLINGS,
*Judge.*

40 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Morris Marks, collector of internal revenue for the district of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Charles A. Snyder is plaintiff and appellant, and you are defendant and appellee, to show cause, if any there be, why the decree rendered against the said Charles A. Snyder, as in said motion and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of April, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS,
*Judge.*

41 (Endorsed:) United States circuit court. No. 8960. Charles A. Snyder, plaintiff and appellant, vs. Morris Marks, collector, &c., is defendant & appellee. Citation.

*Marshal's return.*

Received Jun' 4, 1880, by the U. S. marshal, and on Jun' 12, 1880, I received a true copy of the within citation of appeal on Morris Marks, collector of internal revenue for the district of Louisiana and appellee herein, by delivering the same to him in person in the city of New Orleans, district of Louisiana.

E. S. CURRY,
*D'y U. S. Marshal for District of Louisiana.*

Personally appeared before me, E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a copy of the within citation of appeal on the appellee herein named, as set forth in his official return hereon.

E. S. CURRY,
*D'y U. S. Marshal for District of Louisiana.*

Subscribed and sworn before me, June 12, 1880.

F. A. WOOLFLEY,
*Commissioner United States Circuit Court District of Louisiana.*

(Indorsement on cover:) No. 955. Charles A. Snyder, appellant, vs. Morris Marks, collector of internal revenue for the district of Louisiana. Louisiana C. C. U. S. Filed October 11, 1880.

109-189

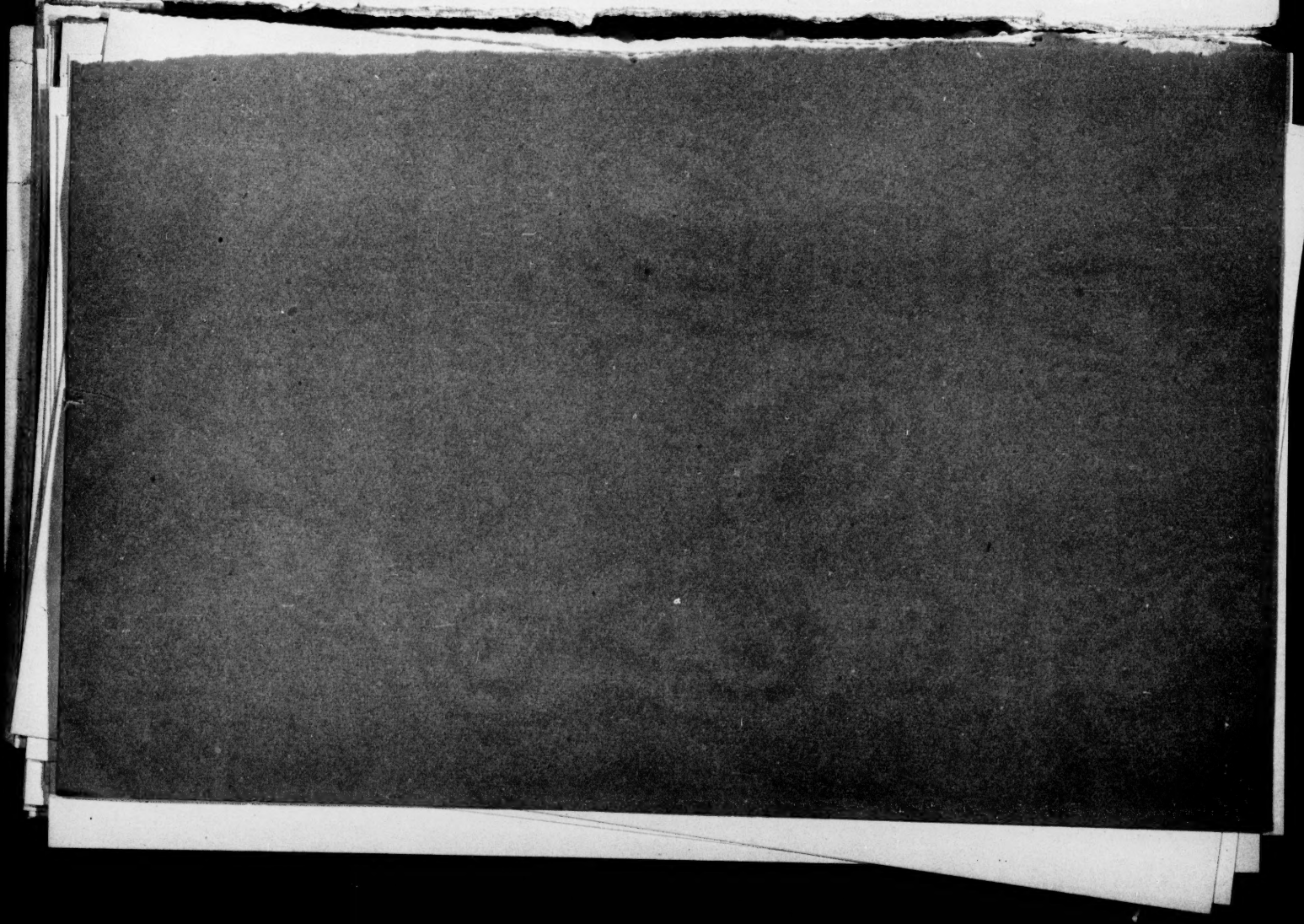
OFFICE SUPREME COURT U. S.
FILED
FEB 7 1881
JAMES H. McKENNEY, Clerk.

# In the Supreme Court of the United States.

OCTOBER TERM, 1880.

SNYDER *v.* MARKS. } No. 955.

MOTION TO DISMISS AND TO AFFIRM.



# In the Supreme Court of the United States.

OCTOBER TERM, 1880.

SNYDER
*v.*
MARKS. } No. 955.

MOTION TO DISMISS AND TO AFFIRM.

The defendant in this cause, by his counsel, the Attorney-General of the United States, comes and moves to dismiss the writ of error and appeal therein, and to affirm the judgment of the circuit court of the United States for the district of Louisiana therein.

EDWIN B. SMITH,
*Assistant Attorney-General.*

REASONS.

1. That the amount in controversy is not sufficient, of itself, to permit the taking an appeal to this court.

2. That this suit is brought to restrain the collection of a tax assessed by the Commissioner of Internal Revenue upon the petitioner, appellant, upon his sales of stamp-tax tobacco; which tax was by said Commissioner

committed to said Marks (in his capacity of collector of internal revenue) for collection; the maintenance of suit for the restraint of the collection of such tax being prohibited by Revised Statutes, section 3224, which says:

"No suit for the purpose of restraining the assessment or collection of *any* tax shall be maintained in *any* court."

## BRIEF.

### I.

The legal question in this case is same as in No. 1119 in which a motion is filed to dismiss and affirm, with the important difference that the injunction in the present instance is imposed by a *State* court upon the collection of a *Federal* tax; and it is also to be noted that the assessment in this case was made *after* the language of Rev. Stat., sec 3224, had been incorporated into the enactment of March 2, 1867. (14 Stats., 475.)

The points presented in No. 1119 apply in this, viz, that if the assessment is valid, its collection certainly cannot be enjoined; if it did not accrue under the internal revenue laws, because not laid in conformity therewith, then this case did not arise under those laws, and there is no ground for bringing the cause here, the *amount* not justifying an appeal, irrespective of the subject-matter, although rightly transferred to the United States circuit court under Rev. Stat., sec. 643, because the laying of the tax was done not merely under color of Federal office, but by virtue and in execution of official duty, whether accurately or inaccurately performed.

If, in the absence of Rev. Stats., sec. 3224, jurisdiction of this appeal could have been sustained, it would have to be founded upon that sentence of the fourth item of sec. 629, which confers it over "all causes arising under any law providing internal revenue."

But if, by any process of reasoning, this cause can be said to arise under such law, *a fortiori* the tax accrues

under such law, and therefore its collection cannot be enjoined. How it is possible to say that this case arises under the internal revenue law, and that the tax it seeks to enjoin does not, cannot be conceived. The converse, however, does not necessarily follow; especially when we observe that this cause originated in a State court

Rev. Stats., sec. 3224, evidently meant to include all assessments made by the proper officers of internal revenue, *virtute vel colore officii.* (See cases cited *infra*, and Judge Blatchford's opinion in No. 1119.)

All the acts upon this subject have provided a special method for determining whether such assessments are legal or illegal, correct or erroneous; viz, by appeal to the Commissioner of Internal Revenue, and suit brought after his decision. This remedy is exclusive. (Rev. Stat., secs. 3226–3228, and acts upon which these sections are founded.)

Reference is here made to the opinion of Judge Blatchford in No. 1119, and to the following (among other) cases cited in my brief, upon motion to dismiss No. 1119: Howland *v.* Soule, Deady, 413; Pullan *v.* Kinsinger, 2 Abbott, U. S. Ct. Reps., 94; Robbins *v.* Freeland, 14 Int. Rev. Rec., 28; Dela. R. R. Co. *v.* Prettyman, 17 *Id.*, 99; Alkan *v.* Bean, 23 *Id.*, 351. (Appeal in this last case was No. 102 of current term; abandoned when reached.) See, also, Cheatham *v.* United States, 92 U. S., 85, 88, *et seq.*

The obvious purpose of Rev. Stat., sec. 3224, is that the collection of governmental revenue shall never be impeded by any *precedent* judicial inquiry and determination; and the fundamental error of the complainant's position in this case (and in No. 1119) is that they seek to defeat this obvious purpose. However inartificially

done—whether clearly, or ambiguously and unintelligibly, expressed—this much, at least, is apparent; that the respondents in these cases are internal-revenue officers of the United States, engaged (*in the very action complained of*), intelligently or otherwise, in an honest effort to collect the moneys claimed of these complainants as a part of the revenue accruing to the United States from internal taxation. If collected, by cash payment or distraint, the money belongs to the United States, and is to be paid into its Treasury upon the day of its receipt. (Rev. Stat. sec. 3210.) Whether rightfully or wrongfully exacted, either *as to form or substance*, it is demanded by and belongs to the United States. This fact alone precludes any judicial determination prior to payment; for the United States possess and have exercised the power of declaring when, where, and how the official acts of its revenue officers shall be called into question before the courts. Cheatham *v.* United States (Norvell, collector), 92 U. S., 85.

II.

There are other reasons peculiar to this case.

The most important is that a *State* court has assumed to interfere with and enjoin the collection of *Federal* revenues. Restrained by its injunction, this particular assessment remains for more than a year and a quarter (to this date) uncollected; and, in the ordinary course of this docket, would be delayed for three years or more.

Generally, no court of equity—irrespective of any prohibitory statute like Rev. Stat., sec. 3224—will interfere to restrain the collection of a tax upon personal property. High says: "§ 354. It may be laid down as a general rule that equity will not interfere to restrain

a tax which is illegal or void merely because of its illegality, but there must be some *special circumstances* attending the injury threatened to distinguish it from a mere trespass, and thus bring the case within some recognized head of equity jurisdiction; otherwise the person aggrieved will be left to his remedy at law;" citing Dows *v.* Chicago, 11 Wallace, 108, and many other cases.

"When a tax is assessed as a personal charge against the party taxed, or against his personal property, it is difficult to suggest any ground of equitable jurisdiction. Presumptively, the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous." (Cooley on Taxation, 538. See, also, *Id.*, pp. 536, 537.)

For the judicial branch of the State government to declare that the executive officers of the Federal government shall not collect a tax, is a dangerous assumption of power. Revenue is the one essential thing for a government. Without it the governmental functions cannot be performed. To be deprived of it by the interference of the officers of another, and, in this respect, subordinate government, is to hold the national existence, practically, at the forbearance of that other government and its officers. A means is found of nullifying Federal statutes without armed resistance or secession.

The *subject-matter* of collecting Federal revenues is not cognizable by a State tribunal. "The sovereignty of a

State extends to everything which exists by its own authority or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable that it does not." (McCulloch *v.* Maryland, 4 Wheaton, 429.) "* * * That the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring upon one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." (*Id.*, 431.) "The question is, in truth, a question of supremacy." (*Id.*, 433.)

See McLean *v.* Buckingham, 3 McLean, 190, middle, and 192.

In a later case the United States courts did enjoin the collection of a State tax, upon the ground that it was an attempt to interfere with the functions of the national government and the exercise of a franchise conferred by it, because, in this way, "the carrier of the mail, the *collector of the revenue*, the marshal of a district, the recruiting officer, may all be inhibited, under ruinous penalties, from the performance of their respective duties." (Osborn *v.* U. S. Bank, 9 Wheaton, 847.) If these officers cannot be interfered with indirectly, by taxes or penalties levied under State legislation, can they be directly, by the mandate of the single judge of an inferior State tribunal, forbidding them to carry on the public duties of their offices? In an earlier part of that same opinion, Marshall, C. J., had observed, "that the legislative, executive, and judicial powers of every well-con-

structed government are coextensive with each other; that is, they are potentially coextensive. The executive department may constitutionally execute every law which the legislative may constitutionally make, and the judicial department may receive from the legislature the power of construing every such law. All governments which are not extremely defective in their organization must possess *within themselves* the means of expounding as well as enforcing their own laws." (*Id.*, 816; see Farmers' National Bank *v.* Dearing, 91 U. S., 34.)

The assessment is quasi-judicial; to be reversed or corrected (if erroneous, excessive, or illegal) *only* in the manner provided by the Revised Statutes, secs. 3226 to 3228. To litigate its validity in any court, it must first be paid; and then litigated only in the courts of the sovereign levying the tax; because such litigation involves the question of the propriety of the exercise of the highest prerogative.

It was observed in Supervisors *v.* Durant, 9 Wall., 418, bottom, that "It would hardly be contended that a State court can enjoin a defendant against paying a *judgment* which has been, or may thereafter be, recovered in a circuit court of the United States. If it may, Federal jurisdiction is a myth. It is at the mercy of the State tribunals. Yet there is no substantial difference in principle between the allowance of such an injunction and that of one * * * to levy an authorized tax." (Dows *v.* Chicago, 11 *id.*, 108; Amy *v.* Supervisors, *ib.*, 136, 138.)

The plaintiff's contention, however, is that this tax being void, its collection may be enjoined; since the Federal government never ordered its officers to collect a void tax. It has already been suggested that, if this

position is tenable, and the tax (because void) did not arise under *any* law, then the complainant has no right of appeal from the decree of the circuit court, whose decision is final over controversies involving only the sum here claimed, unless the case arises under some law relating to internal revenue. Section 643 (as heretofore noticed) gives the officer the right to transfer the case if the act complained of were done under *color* of his office (Tennessee *v.* Davis, 100 U. S., 257); but an appeal lies only if the cause arises under a law providing internal revenue; and if this cause so arises, Rev. Stat., sec. 3224, prohibits an injunction.

It is, however, begging this whole question to say the injunction can be laid because the tax is void. It is the right of the Federal government to have *its* tribunals (if permitted to *any*) determine the validity of the action of its officers in the execution of its laws. The officer acted *virtute officii*, by virtue of an office legally held; not *colore officii*, as a *de facto* incumbent.

Again, the collection of a *valid* tax certainly cannot be enjoined. Hence, it was the design of Rev. Stat., sec. 3224, to prohibit the enjoining, by any tribunal, of the collection of *any* Federal tax upon the ground of assumed invalidity. The statute meant that the question of validity should be determined only in the prescribed way, by suit, after appeal to the Commissioner of Internal Revenue. "We regard this as a condition on which *alone* the government *consents* to litigate the lawfulness of the original tax. It is not a hard condition. Few governments have conceded such a right on any condition." Cheatham *v.* United States (should be entitled Cheatham *v.* Norvell, collector), 92 U. S., 89.) At the commencement of the paragraph, near the top of this same page, is a statement confirmatory of the

position hereinbefore taken. "If there existed in the courts, State or national, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the power of a hostile judiciary." (*Ib.*, citing Dows *v.* Chicago, 11 Wall., 108.)

The collection of the tax on distilled spirits may be enjoined by any county court sitting in the mountain regions of the South.

The course to be pursued, even if the assessment be excessive, erroneous, or illegal, is dictated by Rev. Stat., secs. 3226 to 3228.

The tax is not absolutely void—though it may be excessive, erroneous, or illegal—if the assessing officer had jurisdiction over the subject-matter and assessed the tax in the exercise of that jurisdiction.

Mr. Snyder and Irwin & Snyder were persons within the jurisdiction of the commissioner to assess. (Rev. Stat., sec. 3182.) He could examine and determine upon their liability to assessment. Whichever way he decided the question, he had authority over it. "Jurisdiction is the power to hear and determine. * * * The mere grounds upon which the determination is reached may or may not be correct in themselves. * * Jurisdiction over a question being conceded carries with it, necessarily, the authority, the mere power, to decide the question either way." (Cent. Pac. R. R. Co. *vs.* Placer Co., 43 Cal., 368–'9, per Wallace, C. J.)

That the act of the assessing officer upon persons and subjects subjected to his authority are not void, even if erroneous, see Pullan *vs.* Kinsinger, 2 Abbott's U. S. Cts. Reps., 94; also reported in Am. Law Reg., new series, 557.

## III.

The petition upon which the injunction was granted based the request for it upon the grounds: (1) that said assessments do not show upon what they, or either of them, are based; (2) that they were made to embrace an antecedent period of more than fifteen months.

The Exhibit A, referred to in support of these positions, shows neither of them to be tenable. That exhibit consists of *extracts* from the "Alphabetical lists of persons liable to tax in the collection district of Louisiana, reported by the collector of said district for assessments, and the amount assessed against each by the Commissioner of Internal Revenue, and certified to the collector, for the month of October, 1879." "Upon that list appears the following, under the appropriate heads, as below shown:

| Name. | P. O. address. | Article or occupation. | Period. | Tax assessed. | Total tax and penalty assessed. |
|---|---|---|---|---|---|
| Charles A. Snyder. | New Orleans. | S. T. Tob., 7,800½ lbs. | July 6, '78, to Dec. 3, '78. | $1,872 12 | $1,872 12 |
| Irwin & Snyder | ...do ... | ...do. 6,657 lbs. | Jan. 1, '78, to June 5, '78. | 1,597 68 | 1,597 68 |

Made November 17, 1879."

This assessment was made and a certified copy of the list sent to Mr. Stockdale, the collector at New Orleans (the testator of the plaintiff in error), in accordance with the requirements of Revised Statutes, § 3182, which reads as follows:

"SEC. 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries,

determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal-revenue act, where such taxes have not been duly paid by stamp at the time, and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector, is imperfect or incomplete in consequence of the omission of the name of any person liable to tax, or in consequence of any omission or understatement or undervaluation or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months *from the time of the delivery of the list to the collector* as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid, and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed."

It is to be noticed that this act, approved June 22, 1874, authorized the "assessments of all taxes and penalties imposed by this title, *or accruing under any former internal revenue act*, where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments," &c.

These were not barred by a lapse of fifteen months.

The limitation is "from the time of the delivery of the list" which was imperfect. The plaintiff's petition alleges, as a reason why this tax is void, that it embraces a period of more than fifteen months *antecedent to the day it was made*, November 17, 1879. It does *not* state that it was more than fifteen months after the list it was designed to correct, for no such state of facts existed.

The fifteen-month clause relates to taxes payable upon *returns* made, or that should have been made, not to those payable by stamps. These latter taxes, under the legislation preceding the revision, were not subject to the fifteen-months' bar, but were subjected to a two-years' limitation, as below shown. Rev. Stat., sec. 3371. Compare the act of June 30, 1864, chap. 173, § 20, containing no limitation ("at *any time* thereafter," 13 Stats., 229) with the substituted section in the act of July 13, 1866, chap. 184, § 9 (14 Stats., 104) initiating the fifteen-months provision, as to taxes that had to be listed. (Dandelet *v.* Smith, 18 Wall., 646, § 3.)

The act of March 2, 1867, chap. 169, § 5, reproduced in its amended form in Rev. Stat., sec. 3371, prescribes the law as to the assessment of duties where tobacco, snuff, or cigars, which ought to have been stamped, have been sold or removed without being stamped as required by law. It provides that "whenever any manufacturer of tobacco, snuff, or cigars, sells or removes for sale or consumption any tobacco, snuff, or cigars upon which a tax is required to be paid by stamps, without the use of the proper stamps it shall be the duty of the Commissioner of Internal Revenue, *within a period of not more than two years after such sale or removal*, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid, *and*

*to make an assessment therefor*, and certify the same to the collector. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal."

Thus this, which is originally a stamp tax, after the unstamped article has been wrongfully sold, removed, and probably consumed, or cannot be found (so that it is physically or practically impossible to stamp it) becomes an assessed tax. The tax which is *originally* assessable, like that upon bank circulation, deposits, or sales, is barred of correction, if not adjusted in fifteen months; that which is turned into an assessable tax by the fraud of the manufacturer, may be assessed within two years from the commission of the fraud.

It is assumed by the petition, and undoubtedly maintained to the satisfaction of the State judge who granted this injunction, that these taxes are void for uncertainty, the assessment roll conveying no sufficient information of their character, or of that of the articles upon which they were assessed. The first "is S. T. Tob., 7,800½ lbs." This is against Charles A. Snyder alone. To the unlearned mind, knowing only (what everybody is bound to know) the laws of the land, which impose a tax upon tobacco, the abbreviation "Tob." would, of itself, indicate tobacco. But the assessment roll is for the collector; it is his warrant, upon receipt of which he is bound to demand the tax immediately, and to proceed to collect by distraint if not paid voluntarily—to which contingency this case in effect adds, "unless restrained by the judicial department of the State in which the collector happens to exercise his functions." The collector can easily understand his warrant. So can any person who will examine the *whole* instrument. The Commissioner

of Internal Revenue is authorized to prepare and distribute all the *instructions*, regulations, *directions*, *forms*, *blanks*, stamps, and other matters pertaining to the assessment and collection of internal revenue." Rev. Stat., sec. 321. The assessment roll, *extracts* from which are found in this record (Record, page —), is upon a blank known and designated as "Form 23 A," of which a specimen will be handed to the court with this brief—to be used argumentatively. Upon the outside of this blank are "instructions to collectors relative to Form 23 and Form 58," consisting of the Commissioner's directions to the collectors as to the method of filling up the reports upon which assessments are based. These reports to the Commissioner are "such information as he can obtain" for the basis of an assessment for unpaid stamp taxes. Rev. Stat., § 3371. The before-mentioned directions to collectors npon Form 23 A, near the bottom of the first column, say: "When an assessment is reported against a distiller, brewer, *manufacturer of tobacco*, snuff, or cigars, or other manufacturer, *for having removed any taxable articles* from his distillery, brewery, or manufactory, as the case may be, *without the use of the proper stamp*, or for not having duly paid such tax by stamp at the time and in the manner provided by law, the entry in this column should be 'stamp-tax spts.,' '*stamp-tax tob.*,' 'stamp-tax cigars,' stamp-tax beer,' 'stamp-tax medicine,' stamp-tax perfumery,' as the case may be. *The initials S. T. may be used* as an abbreviation for 'stamp tax.'" A few lines above that upon which this quoted passage begins, authority is given to use "Tob." for "tobacco."

If the abbreviations themselves were not entirely intelligible, they were explained and made so at the com-

mencement of the very instrument in which they occur. *Id certum*, &c. We find that they indicate these assessments to be made under Rev. Stat., § 3371, for tobacco removed from the manufactory, fraudulently or otherwise, without being stamped as required by law; which assessment may be at any time within *two years* after the removal, which is the cause for it, occurs.

The second assessment against Irwin & Snyder is for a similar transaction, *i. e.*, the removal or sale of unstamped tobacco. It is indicated upon the roll by putting in the proper column off against the firm-name of Irwin & Snyder, and under the "S. T. Tob., 7,800½ lbs.," which is set opposite to Charles A. Snyder's name, this entry, "do. 6,657 lbs." The unanimous opinion of the supreme court of Maine, rendered little more than a year ago in the exciting political controversy then existing in that State, met with such general acceptance there and elsewhere as sound legal exposition that I will only cite its language upon the use of this abbreviation "do." "The word ditto and its abbreviation 'do.', and the dots or marks that stand for the word ditto, are of common use, and have a perfectly well-defined meaning known to persons generally. That meaning should not be disregarded." (70 Maine, 567.) What was said in a subsequent part of that opinion, as to returns made by town officers, is applicable to the document and entries here under discussion. "They are not required to be written with the scrupulous nicety of a writing-master, or with the technical accuracy of a plea in abatement. The sentences may be ungrammatical, the spelling may deviate from the recognized standard, but returns are not to be set at naught because the penmanship may be poor, the language ungrammatical, or the spelling erroneous. *It*

Sibley v. Smith, 2 Mich., 486, 503.

*is enough if the returns can be understood;* and if understood, full effect should be given to their natural and obvious meaning. They are not to be strangled by idle technicalities; nor is their meaning to be distorted by carping and captious criticism." (70 Maine, 569.)

If my friend Rouse argue that, owing to the question being raised by demurrer, recourse cannot be had to the explanatory instructions which I have quoted from Form 23, there is no evidence properly in the case to show what "S. T. Tob., 7,800½ lbs.," and "do. 6,657 lbs.," really mean, my answer is that the abbreviations, in the place and for the revenue purposes which occasion their use, have an obvious meaning, of which the court will take judicial cognizance, without oral or written testimony. The Maine court so declared as to "do." or mere ditto *marks.* Certainly that decision must hold good as to "lbs." also. Nor are "Tob." and the preceding initials any more doubtful to one familiar with the law and with the subject. First, this tobacco manufacturer, Snyder, knew, in common with all his countrymen, that *individuals* (except bankers) were taxable only for their doings with relation to distilled or fermented spirits, tobacco in some form, proprietary medicines, perfumery, matches, playing-cards, and their use of bank-checks. (Rev. Stat., Title XXXV, chapters 3 to 9, inclusive; pp. 620 to 679 of 2d edition.)

Now, "lbs." is a very common and perfectly intelligible abbreviation. It indicated to this tobacconist, Snyder, that he was assessed for something *by the pound;* and, dividing the sum by the quantity, he would perceive that the rate was just 24 cents per pound. In the whole scheme of Federal taxation, as it now exists, there are,

however, but *two* articles upon which the tax is assessed by the pound, viz, snuff and manufactured tobacco (Rev. Stat., sec. 3368); and but *one* assessed at the rate of 24 cents per pound; and that is the latter, by act of March 3, 1875, chap. 127, § 2 (18 Stats., 339).

But the law requires the tax upon manufactured tobacco, &c., to be paid by stamps, placed upon the packages before they are sold, or removed for sale or consumption. (Rev. Stat., secs. 3372 to 3377.)

Section 3371, hereinbefore printed in full, contains the only provision for putting upon the assessment roll manufactured tobacco; *i. e.*, when it has been sold or removed without being stamped. Familiar, in fact (as everybody is presumed in theory to be), with the law pertaining to his business, Mr. Snyder could not have failed to understand, as the collector did, and as any court administering Federal law and sitting under its authority would, that this tax of 24 cents a pound was upon manufactured tobacco, sold or removed without being stamped, between the dates mentioned, which were all within two years from the day the assessment was made. He *must* have known, not only that "lbs." meant "pounds," and "Tob.," "tobacco," but that "S. T. Tob." indicated such tobacco, to the quantities specified, sold or removed within the times indicated, by himself and his firm, without being stamped. However cabalistic and unintelligible these symbols may be to his counsel and other persons uninitiated into the mysteries of his craft—as the Gospel is "unto the Jews a stumbling-block, and folly to the Greek"—to Mr. Snyder's instructed mind, enlightened by legislation and business experience, they must have been (as they were to the collector) as easily comprehended as the most elaborately

detailed definition and description of the articles taxed. If the revenue officers, tax payers, and court can understand these abbreviations, it is immaterial whether the rustic mind could or not.

Thus, the plaintiff's own omission to incorporate into Exhibit A the passage of the instructions upon the assessment blank, authorizing the use of these abbreviations, becomes of no consequence, under the exegesis of the statutes, except as it has obliged me to weary the court with a much longer brief than I otherwise would.

The plaintiff can gain nothing from putting in a garbled or incomplete statement of the assessment, or of the paper of which it forms but a very small part.

EDWIN B. SMITH,
*Assistant Attorney-General.*

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109-189

SUPREME COURT
FILED
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JAMES H. McKENNEY, CLERK

# In the Supreme Court of the United States.

OCTOBER TERM, 1880.

No. 955.

SNYDER vs. MARKS.

*Complainant's brief on the motion to dismiss and to affirm.*

J. D. ROUSE,
WM. GRANT.
*Solicitors for Appellant.*

NEW ORLEANS, February 19, 1881.

L. Grahain & Son, print, 127 Gravier st.

# In the Supreme Court of the United States.

OCTOBER TERM, 1880.

No. 955.

SNYDER vs. MARKS.

*Complainant's brief on the motion to dismiss and to affirm.*

I.

The motion herein is based upon two grounds, in substance as follows, viz:

1. "That the amount in controversy is not sufficient, of "itself, to permit the taking an appeal to this Court."

2. That this suit is brought against a collector of internal revenue to restrain the collection of an internal revenue tax; and therefore is prohibited by section 3224, R. S., which says:

"No suit, for the purpose of restraining the assessment or collection of *any tax* shall be maintained, in *any Court.*"

It seems to be conceded—and whether it be or not, it is clear—that section 699, R. S., paragraph third, authorizes an appeal, or writ of error, from any final judgment or decree of a Circuit Court, "in any civil action against any *officer of the revenue* for any act done by him in the performance of his official duty,"—"without regard to the sum or value in dispute."

If the second ground of the motion be true in point of fact, the first ground is without any foundation.

Jurisdiction of appeals, or writs of error, in such cases, has been entertained so often by this Court, that it cannot be considered a question admitting of doubt.

This suit is brought against the defendant as an "officer of the revenue," to-wit: a collector of internal revenue, on account of acts done and threatened by him in his official capacity as such collector.

The second ground of the motion is based upon this very fact. We confess we cannot understand the refinements in the argument of the Assistant Attorney General, that if the tax in question was not laid in conformity with the internal revenue laws, then this case did not arise under those laws, although "the laying of the tax was done not merely under color of federal office, but by virtue and in execution of official duty, whether accurately or inaccurately performed." Neither can we understand how the case could be properly transferred from the State Court to the United States Circuit Court, by writ of certiorari, under the provisions of section 643, R. S.; because, as set forth in defendant's petition, therefor, "the said suit is for and on account of acts done by petitioner as collector aforesaid, under authority of the internal revenue laws of the United States," and yet not be removable to this Court under the provisions of section 699, R. S. May we not infer that this position is taken by the mover, with a view to avoid the effect of the rule laid down in *Nelson vs. Leland*, 22 How., 48, that where the jurisdiction of the Court below is assailed, the motion to dismiss will not be entertained. Here the effort is to defeat the jurisdiction of this Court, and maintain that of the Court below, when both are dependent upon the same state of law and fact.

Will we do injustice to our learned brother, whose ingenuity we always admire, if we also suppose, that he sought to avoid the effect of another rule laid down by this Court, by joining his motion to dismiss the appeal, on this ground, with his motion to affirm on the other ground stated, to-wit: the rule in *Whitney vs. Cook*, 99 U. S. Rep., 607, that a motion to affirm will not be entertained unless coupled with a motion to dismiss, with at least some color of right to a dismissal appearing on the record?

It will not do to reply that a color of right to dismiss exists, because of the provisions of section 3224, R. S., relied upon in the second ground of the motion. That ground of the motion

assails the jurisdiction of the Court below, and is obnoxious to to the rule in *Nelson vs. Leland*, above cited. Mr. Chief Justice Taney there said "that the qustion of jurisdiction in the lower Court is a proper one for appeal to this Court, and for argument when the case is regularly reached, *and that this Court has jurisdiction on such appeal.*

The question of jurisdiction was raised in the Court below, by the demurrer in this case, and the demurrer was sustained because of the supposed statutory prohibition to entertain the suit, and that is the principal question brought here for review. If it had no jurisdiction to maintain the suit, then said Court erred in denying the plaintiff's motion to vacate and recall the writ of certiorari, removing the cause from the State Court. If the Court erred in denying such motion, the complainant's right to have such ruling reviewed on appeal in this Court seems unquestionable; and if it did not err in such ruling and the cause was properly removed into the Circuit Court, said Court thereby became invested with jurisdiction, although it might not have had jurisdiction thereof, if it had been originally brought in said Court. *Gaines vs. Fuentes, et al.*, 92 U. S. Rep. 10.

But the Circuit Court would have had jurisdiction of the case, if it had been originally commenced therein. The Act of March 3d, 1875, section 1, expressly confers jurisdiction upon Circuit Courts, of all suits of a civil nature at common law, or in equity, when the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the constitution or laws of the United States; and section 10 of said Act expressly repeals "all Acts and parts of Acts in conflict with the provisions of this Act." Therefore, if the effect claimed for section 3224, R. S., be conceded, while it remained in force, it being in direct conflict with the Act of 1875, is repealed thereby, and has no application to the present case.

II.

We have thus far discussed the second ground of the motion as if the mover had correctly stated the *object* and *nature* of the suit.

This he has entirely misconceived.

It is *not* a suit "brought to restrain the *collection of a tax* assessed * * * upon the appellant, upon his sales of stamp-tax tobacco." No such injunction was either sought or obtained. If the counsel for the defendant had examined the petition by which the suit was commenced, and the injunction granted thereon, he would have seen, that the plaintiff sought to restrain the collector from distraining and selling his property, under the pretense of collecting the amount of *two* assessments, *one* of which was against a firm of Irwin & Snyder, of which firm the plaintiff never was a member; and the injunction went no further than to restrain the defendant from seizing and selling the plaintiff's property, to pay said assessments.

All other modes, provided by law, were left open for the collection of these assessments. The collector was not even enjoined from distraining Irwin & Snyder's property, against whom one of the assessments was made. And the plaintiff averred that he had given a good and solvent bond, upon which an action would lie, for any tax claimed to be due by him.

Possibly the prayer of the amended bill afterwards filed in the Circuit Court may be construed to embrace a larger measure of relief, but by asking more relief than he is entitled to, the complainant did not forfeit that which is due him.

III.

The learned counsel *assumes*, in the statement of the second ground of his motion, that the supposed assessments were upon *sales* of "stamp-tax tobacco" (whatever that may be). We say *assumes*, because the assessments in question do not disclose upon what they are made. See copy of the assessments in defendant's brief, p. 11.

If it be true, that the tax assessed is upon *sales* of tobacco of any kind, it follows of necessity that the commissioner had no jurisdiction to make the assessment, because all laws imposing taxes upon *sales* of tobacco, or other commodities, were repealed long before the period of time embraced in the assessments. Neither of the assessments show upon what the tax

is levied. We may as well assume that S. T. Tob., means Smith's Theoretical Toboggin, upon which our learned friend is making a perilous descent from the heighth of argument, as that it means stamp tax tobacco.

The necessity of assuming anything in the premises, shows that the assessments fail to disclose jurisdiction in the Commissioner to make them We concede that an assessment by the Commissioner, in a case where he has jurisdiction to make one, is sufficient warrant for the collector, although the assessment may in point of fact be erroneous. But the collector derives no more authority from an assessment which discloses a want of jurisdiction in the assessor, than a sheriff does from a writ issued by a Court without jurisdiction of the subject matter. Suppose that the assessment had been upon 1000 acres of land, at $1 00 per acre, could any one contend that the collector would be justified in enforcing payment of such a tax? Abundant support for our views upon this point is found in Cooley on Taxation, chapter xiii.

## IV.

The grave constitutional questions involved in the consideration of the provisions of section 3224 R. S.—if that statute be not repealed—show the right and necessity of oral argument thereof upon final hearing of the cause.

As we doubt not this Court will refuse to decide them upon a motion to dismiss, we will do little more here than indicate them.

The statute forbids *any Court* maintaining a suit for the purpose of restraining the assessment or collection of *any tax.*

The language includes the Courts of the States, as well as those of the United States, and taxes levied by State or municipal authority, as well as by the Congress.

Its application to the Courts of the States is clearly unconstitutional. Their jurisdiction is not dependent upon the will of Congress. In *The Collector vs. Day*, 11 Wall. Rep. 124, this Court said:

"It is a familiar rule of construction, of the constitution of

"the Union, that the sovereign power vested in the State gov-
"ernments by their respective constitutions, remained unal
"tered and unimpaired, except so far as they were granted to
"the government of the United States. * * * *

"The general government, and the States, although both ex-
"ist within the same territorial limits, are separate and dis-
"tinct sovereignties, acting separately and independently of
"each other, within their respective spheres. The former, in
"its appropriate sphere, is supreme; but the States within the
"limits of their powers not granted, or, in the language of the
"tenth amendment, "reserved,"—are as independent of the
"general government as that government within its sphere is
"independent of the States."

And, again, in the same case, p. 126: "We have said that
"one of the reserved powers was that to establish a judicial
"department; it would have been more accurate and in ac-
"cordance with the existing state of things at the time, to
"have said the power to maintain a judicial department. All
"of the thirteen States were in possession of this power, and
"had exercised it at the adoption of the constitution; and it
"is not pretended that any grant of it to the general govern-
"ment is found in that instrument. *It is therefore one of the*
"*sovereign powers vested in the States by their constitutions,*
"*which remained unaltered and unimpaired,* and in respect to
"which THE STATE IS AS INDEPENDENT OF THE GENE-
"RAL GOVERNMENT, AS THAT GOVERNMENT IS INDEPENDENT
"OF THE STATES."

The correctness of these conclusions no one can doubt. The very existence of the States, depends upon their maintenance. Apply them to the statute under consideration, and its application to the courts of the States must be denied. If Congress may prohibit the exercise of their jurisdiction in one case, or class of cases, it may in all cases, and thus destroy the judicial department of the States, and with it the autonomy of the States themselves.

The prohibitions of the statute must then be confined to the United States Courts. Suits to enjoin the collection of taxes have been often maintained in the Federal Courts. *Osborne vs.*

*Bank of United States*, 9 Wheaton, 738; *Dodge vs. Woolsey*, 18 How., 331; *Cutting vs. Gilbert*, 5 Blatch. 259.

In the first two cases cited, the injunction was directed against the collection of taxes under State authority. Can it be possible, that if suits identical with them, were now brought in the Federal Courts, they would be dismissed because of the provisions of section 3224 R. S.; and that this Court would dismiss an appeal from such a decree, for the same reason?

Suppose suit is brought in a Federal Court by an alien, to enjoin the collection of a tax, claimed to accrue under an Act of Congress, would the statute apply? General jurisdiction is given the Circuit Court of suits between aliens and citizens, either at law or in equity, when the amount in dispute exceeds five hundred dollars. Shall the statute be construed to limit the relief which the Court might give him, and control it in the exercise of its jurisdiction? If Congress may do it in one class of cases, it may do it in all. Admit the power, and the powers of our Federal judiciary might be reduced to the original jurisdiction of this Court, and its power to grant relief to suitors circumscribed to suit the whim of Congress.

But the Act of March 3, 1875, entitled "an Act *to determine the jurisdiction of Circuit Courts of the United States*," etc., expressly grants to said Courts "original cognizance concurrent with the courts of the several States, of *all suits* of a civil nature at common law or *in equity*, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and *arising under the constitution or laws of the United States*," etc. 18 Stat. 470.

This Act not only recognizes the jurisdiction of the State Courts, as concurrent in like causes, but removes all limitation upon such jurisdiction in the Courts of either government, supposed to be found in Section 3224, R. S.

We do not see the necessity of pursuing the argument further. We cannot believe that this Court will determine such grave questions upon a motion to dismiss. But if the motion

should be granted, either because the case is not one against an officer of the revenue, or because of section 3224 R. S., the Court must necessarily decide that the Court below had no jurisdiction, and therefore that the cause was not removed into that Court, but is still pending in the State Court, where it was originally brought.

Respectfully submitted,

J. D. ROUSE,

WM. GRANT.

*Solicitors for Appellant.*

NEW ORLEANS, February 19, 1881.

109-189

# In the Supreme Court of the United States.

October Term, 1883.

No. 94.

CHARLES A. SNYDER, Appellant,

*vs.*

MORRIS MARKS, Collector, etc., Appellee.

*Appeal from the Circuit Court of the United States for the District of Louisiana.*

*Brief upon behalf of the Appellant.*

## STATEMENT OF THE CASE.

This suit was commenced in the third district court for the parish of Orleans, State of Louisiana, whence it was removed by writ of certiorari (record, p. 2) into the circuit court of the United States.

By leave of court the plaintiff filed an amended bill, so as to conform his pleading to equity practice, and the cause was heard upon demurrer thereto.

The amended bill (R., p. 10) shows that the plaintiff was a tobacco manufacturer at New Orleans, and that the defendant as collector of internal revenue was about to distrain his property and sell the same for the purpose of making the amount of two pretended assessments of taxes, one against the plaintiff for $1,872.12, and one against Irwin &

Snyder for $1,597.68. The bill avers that said assessments fail to disclose the subject of the tax claimed, are void for uncertainty, unauthorized by law, and that the Commissioner of Internal Revenue was without jurisdiction to make the same. A copy of the assessments is annexed to the bill, (R., p. 12.) It is also averred that plaintiff never was a member of the firm of Irwin & Snyder, against which one of said assessments was made, and the assessment itself shows that it embraced a period of time more than fifteen months prior to the date thereof, by which the action of the Commissioner was prescribed. The plaintiff denies that he owes or ever did owe either of said assessments, and avers that a distraint upon and sale of his property for the payment thereof would cast a cloud upon his title thereto, and that said defendant is without property subject to execution equal to, or otherwise able to respond to, the damages which such seizure and sale would entail upon plaintiff. He also avers that he gave a bond as tobacco manufacturer in favor of the United States in the penal sum of $20,000, conditioned, among other things, that he would stamp all tobacco manufactured by him as required by law and comply with all the requirements of law relating to the manufacture of tobacco, and that the sureties upon said bond are solvent, which bond is ample security for any sum due the United States, and upon which an action would lie.

The prayer of the bill is that said assessments be declared void and of no effect against the plaintiff, and that the defendant be enjoined from distraining upon or selling plaintiff's property for the purpose of collecting the same, and from otherwise attempting to enforce payment thereof *except by judicial process.*

The defendant demurred, (R., p. 8,) the demurrer was sustained, and the bill dismissed, (R., p. 12.) The plaintiff appealed and makes the following

ASSIGNMENT OF ERROR.

1st. The circuit court erred in sustaining the defendant's demurrer and dismissing plaintiff's bill.

2d. It was error to dismiss the bill for want of jurisdiction.

ARGUMENT.

I.

The question raised by the demurrer in the circuit court is one of jurisdiction, and the demurrer was sustained because of a supposed statutory prohibition to maintain such suit. The statute relied upon to defeat the jurisdiction is section 3224, R. S., which says:

"No suit for the purpose of restraining the assessment "or collection of *any tax* shall be maintained in *any court.*"

The language includes the courts of the States as well as those of the United States, and taxes levied by State or municipal authority as well as by the Congress.

Its application to the courts of the States would be clearly unconstitutional. Their jurisdiction is not dependent upon the will of Congress.

In *The Collector* vs. *Day*, (11 Wall. Rep., 124,) this court said: "It is a familiar rule of construction of the Consti- "tution of the Union that the sovereign power vested in "the State governments by their respective constitutions "remained unaltered and unimpaired, except so far as they "were granted to the Government of the United States. * * * *

"The General Government and the States, although both "exist within the same territorial limits, are separate and "distinct sovereignties, acting separately and independently

" of each other within their respective spheres. The former, " in its appropriate sphere, is supreme; but the States " within the limits of their powers not granted, or, in the " language of the tenth amendment, 'reserved,' are as in- " dependent of the General Government as that Government " within its sphere is independent of the States."

And again, in the same case, (p. 126 :) " We have said that " one of the reserved powers was that to establish a judicial " department; it would have been more accurate and in ac- " cordance with the existing state of things at the time to " have said the power to maintain a judicial department. " All of the thirteen States were in possession of this power, " and had exercised it at the adoption of the Constitution; " and it is not pretended that any grant of it to the General " Government is found in that instrument. *It is therefore* " *one of the sovereign powers vested in the States by their* " *constitutions, which remained unaltered and unimpaired,* " and in respect to which THE STATE IS AS INDEPENDENT OF " THE GENERAL GOVERNMENT, AS THAT GOVERNMENT IS INDE- " PENDENT OF THE STATES."

The correctness of these conclusions no one can doubt. The very existence of the States depends upon their maintenance. Apply them to the statute under consideration, and its application to the courts of the States must be denied. If Congress may prohibit the exercise of their jurisdiction in one case or class of cases it may in all cases, and thus destroy the judicial department of the States, and with it the autonomy of the States themselves.

Congress has repeatedly recognized the jurisdiction of the State courts to entertain suits against officers of the United States by providing for the removal of such suits to the Federal courts.

The prohibitions of the statute must, then, be confined to the courts of the United States, and with limitations even

there. Suits to enjoin the collection of taxes have been often maintained in the Federal courts. (*Osborne* vs. *Bank of United States*, 9 Wheaton, 738; *Dodge* vs. *Woolsey*, 18 How., 331; *Cutting* vs. *Gilbert*, 5 Blatch., 259.)

In the first two cases cited, the injunction was directed against the collection of taxes under State authority. Can it be possible that if suits identical with them were now brought in the Federal courts they would be dismissed because of the provisions of section 3224, R. S.?

On the contrary, since the passage of the act now under consideration, this court held, in *Hill* vs. *Exchange Bank*, (105 U. S. Rep., 319,) that a national bank may, on behalf of its shareholders, maintain a suit to enjoin the collection of a tax which has been unlawfully assessed upon their shares by the State authorities. And in *Evansville Bank* vs. *Britton*, (105 U. S. R., 322;) in *Pelton* vs. *National Bank*, (101 U. S. R., 143,) and in *Cummings* vs. *National Bank*, (*ibid*, 153,) decrees granting injunctions in such case were affirmed.

Suppose suit were brought in a Federal court by an alien, or an ambassador or consul of a foreign government, to enjoin the collection of a tax claimed to accrue under an act of Congress, would the statute apply? General jurisdiction is given the circuit court of suits between aliens and citizens, either at law or in equity, when the amount in dispute exceeds five hundred dollars. Shall the statute be construed to limit the relief which the court might give him, and control it in the exercise of its jurisdiction? If Congress may do it in one class of cases, it may do it in all. Admit the power, and the jurisdiction of our Federal judiciary might be reduced to the original jurisdiction of this court, and its power to grant relief to suitors circumscribed to suit the whim of Congress.

But the act of March 3, 1875, entitled "An act *to deter-*

" *mine the jurisdiction of circuit courts of the United States,*" etc., expressly grants to said courts "original cognizance " concurrent with the courts of the several States of *all suits* " of a civil nature at common law or *in equity* where the " matter in dispute exceeds, exclusive of costs, the sum or " value of five hundred dollars, and *arising under the Consti-* " *tution or laws of the United States,*" etc. (18 Stat., 470.)

This act not only recognizes the jurisdiction of the State courts as concurrent in like causes, but removes all limitation upon such jurisdiction in the courts of either Government supposed to be found in section 3224, R. S.

Section 10 of said act expressly repeals "all acts and parts " of acts in conflict with the provisions of this act." Therefore, if the effect claimed for section 3224, R. S., be conceded while it remained in force, it being in direct conflict with the act of 1875 it is repealed thereby, and the circuit court invested with jurisdiction in such cases.

We think we have demonstrated that the prohibitory statute could not affect the jurisdiction of the State courts. Granting, for sake of argument, that the circuit court by reason thereof could not have maintained the plaintiff's suit if it had been originally brought therein, the statute which authorized its removal from the State court to the circuit court conferred jurisdiction upon that court to hear and determine the same. (*Gaines* vs. *Fuentes et al.*, 92 U. S. Rep., 10.)

It would be, indeed, a strange construction of the statute to hold that it authorized the removal of the case to a court incompetent to hear and determine it.

II.

Defendant's motion to dismiss this appeal was based upon the assumption that this suit was brought to restrain the collection of taxes assessed against the plaintiff, and we have

argued the jurisdictional question as if that were the fact. But in truth no such injunction was either sought or obtained. If the counsel for the defendant had examined the petition by which the suit was commenced, and the injunction granted thereon, he would have seen that the plaintiff sought to restrain the collector from distraining and selling his property under the pretence of collecting the amount of *two* assessments, *one* of which was against a firm of Irwin & Snyder, of which firm the plaintiff never was a member; and the injunction went no further than to restrain the defendant from seizing and selling the plaintiff's property to pay said assessments.

All other modes provided by law were left open for the collection of these assessments. The collector was not even enjoined from distraining Irwin & Snyder's property, against whom one of the assessments was made. And the plaintiff averred that he had given a good and solvent bond, upon which an action would lie, for any tax claimed to be due by him.

Possibly the prayer of the amended bill afterwards filed in the circuit court may be construed to embrace a larger measure of relief, but by asking more relief than he is entitled to the complainant did not forfeit that which is due him.

Giving to section 3224, R. S., the broadest construction claimed for it, and the maintenance of this suit is not obnoxious to its provisions. Congress intended that A should not by injunction prevent the *collection* of a tax assessed against *him*. But there is nothing expressed or implied in the act to prevent B from enjoining the collection *from him* of the tax assessed against and due by A. Such injunction would impair none of the remedies against A. Neither is there anything in the act to prevent enjoining the collector from proceeding in an oppressive manner against A, so long as ample modes of procedure for collec-

tion are left open to him. This case presents an apt illustration of the necessity of this construction. The plaintiff is a large manufacturer of tobacco, and has given bond in a large amount, conditioned to pay all taxes due by him, and his sureties are solvent. The distraint upon and sale of his manufactory would destroy his business and work him irreparable injury. He denies the validity of the assessment and the jurisdiction of the assessor. A suit upon his bond would have determined these questions at least three years ago. He purposely left that mode of collection open to the collector, and offered to go to trial at once if suit were brought, but for some unaccountable reason those in authority have persistently refused to test his liability in court.

III.

The circumstances of this case brings it under two recognized heads of equity jurisprudence, and excludes any adequate remedy at law. The bill shows that the plaintiff is a manufacturer of tobacco, and that a seizure of his property and sale upon distraint would work him irreparable injury. No argument is required to show that the interruption of his business by distraint would cause damages impossible to estimate, and that a sale thereunder would work irreparable injury by the total destruction of it. Moreover, the bill also shows that the defendant is without means or property equal to, or otherwise able to respond to, the damage such distraint and sale would entail upon the plaintiff.

It has often been held that courts of equity will interfere by injunction to restrain the collection of an illegal tax where irreparable injury would result from its enforcement. (*Dows* vs. *City of Chicago*, 11 Wall., 108; *Hennewinkle* vs. *Georgetown*, 15 Wall., 548.) And if they will so interfere to prevent the wrong and injury which would result

from the collection of an illegal tax, much more readily will they do so where the tax is not assessed against the party seeking the injunction, nor even claimed to be due by him.

The bill also avers that the threatened distraint and sale would cast a cloud upon plaintiff's title. This has also been held sufficient to authorize the interposition of a court of equity to prevent by injunction the collection of a tax where such cloud would result. (*Dows* vs. *City of Chicago; Hennewinkle* vs. *Georgetown*, *supra.*)

Section 3186, R. S., creates a lien for the amount of any tax unpaid, upon demand, upon all property and rights to property belonging to the person liable therefor, and other sections authorize distraint and sale thereof.

"If the tax is a lien upon the land, it may then constitute "a cloud upon the title, and one branch of equity jurisdic- "tion is the removal of apparent clouds upon the title which "may diminish the market value of the land, and possibly "threaten a loss of it to the owner."

Cooley on Taxation, chap. XXIV, p. 542.

When the record would make out a *prima facie* right in a purchaser at a tax sale, or when the deed would by statute be presumptive evidence of a good title in the purchaser, courts of equity regard the case as coming within their ordinary jurisdiction, and have extended relief on the ground that a cloud on the title existed or was imminent.

Cooley on Taxation, p. 543, citing half a page of authorities.

It is no answer to the bill in such a case that the tax might have been collected from personal property. (*Scofield* vs. *Lansing*, 17 Mich., 437.)

Section 3199, R. S., makes the deed of sale in case of distraint for taxes "*prima facie* evidence of the facts therein "stated; and if the proceedings of the officer making the

" sale have been substantially in accordance with the pro-
" visions of law," it operates as a conveyance of the party's interest in the property.

This brings the case within the rule laid down by Cooley, *supra*, for which he cites a multitude of authorities. And see High on Injunctions, 2d ed., sec. 494; also *Hanlon* vs. *Supervisors*, 8 Abb. Pr. R., N. S., 268.

## IV.

The assessments do not disclose upon what thing it was intended to levy a tax. It cannot be determined from an inspection of the assessment (R., p. 12) what is the subject of the imposition.

In his motion to dismiss, the defendant's counsel assumed that the assessments were upon *sales* of " stamp-tax tobacco," (whatever that may be.)

If it be true that the tax assessed is upon *sales* of tobacco of any kind, it follows of necessity that the Commissioner had no jurisdiction to make the assessment, because all laws imposing taxes upon *sales* of tobacco or other commodities were repealed long before the period of time embraced in the assessments.

The necessity of assuming anything in the premises shows that they fail to disclose jurisdiction in the Commissioner to make them. The jurisdiction of the Commissioner is limited. He can make assessments only for specific taxes imposed upon certain objects or occupations. His jurisdiction must affirmatively appear upon every assessment. It cannot be presumed. The collector derives no more authority from an assessment which discloses a want of jurisdiction in the assessor to make it than a sheriff does from a writ issued by a court without jurisdiction of the cause in which it issued. Abundant support for these views is found in Cooley

on Taxation, chapter XIII. The assessments embrace a period of time more than fifteen months anterior thereto.

As appears upon their face, section 3182, R. S., limits the power of the Commissioner to make assessments, and among other limitations he is confined in point of time to fifteen months next preceding the date of the assessment.

The decree sustaining the demurrer to plaintiff's bill and dismissing the same should be reversed, and a decree made granting the relief prayed for.

Respectfully submitted.

J. D. ROUSE,
W. GRANT,
*Solicitors for Appellant.*